IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7529 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURABH NATWARLAL SOPARKAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7529 of 2002

MR PK JANI for Petitioner No. 1

MR KG SHETH, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/05/2003

C.A.V. JUDGEMENT

This petition under Sec.482 of the Code of Criminal Procedure has been filed for quashing and setting aside the complaint and the process issued in Criminal Case No.314 of 2002 pending in the Court of learned Chief Metropolitan Magistrate, Ahmedabad qua the present petitioner.

2. The facts in short are that petitioner is a

Chartered Account and an advocate practising in the High Court of Gujarat. He was appointed as a Director of Shree Rama Multi Tech. Ltd. He resigned from the said post with effect from 17-1-2002 and necessary form No.32 as prescribed under the Companies Act, 1956 has been submitted by the petitioner. A certified true copy issued by Asstt. Registrar of Companies, Gujarat, Ahmedabad, dated 13th of February, 2002 has been annexed with the petition as Annexure-A at page Nos.3 and 4. After the resignation of the petitioner as Director, four cheques dated 21-3-2002 for Rs.99,99,990/-, 22-3-2002 for Rs.1,52,28,450/-, 28-3-2002 for Rs.2,00,00,000/- and 28-3-2002 for Rs.2,00,00,000/-drawn on Kalupur Commercial Co-Op. bank Ltd. were issued by the Company in favour of the complainant towards repayment of loans, interest and other dues. When these cheques were presented by the complainant with the bankers, same were dishonoured with the endorsement "IT attachment". Hence, a notice dated 1-4-2002 was sent by the complainant under the provisions of sec.138 of the Negotiable Instruments Act by registered post to the accused persons and it was received by the accused on 6-4-2002. Thereafter, a complaint was filed by the respondent No.2 directly into the Court of learned Chief Metropolitan Magistrate, Ahmedabad, on 24-4-2002 under the provisions of sec.138 of the Negotiable Instruments Act against Shree Rama Multi Tech Ltd. and its directors including the present petitioner which has been registered as Criminal Complaint No.314 of 2002 wherein, after recording the verification of the complainant, process was issued by the learned Chief Metropolitan Magistrate against the petitioner and other directors of the company as well as the Company. Hence, the present petition has been filed under Sec.482 of the Code of Criminal Procedure for quashing.

3. Heard learned counsel for the petitioner, Mr.P.K.Jani, learned APP for the respondent No.1, Mr.K.G.Sheth.

4. It is stated by Mr.P.K.Jani, learned counsel for the petitioner, that petitioner has been appointed as a Director of Shree Rama Multi Tech. Ltd. and he has resigned from the said post with effect from 17th January, 2002 and necessary form No.32 as required under the Companies Act was submitted by the petitioner. It is further stated that since four cheques issued by the said company in favour of complainant after the resignation of the petitioner as Director were dishonoured on presentation with the bankers, complaint has been filed against the petitioner and others. It is therefore

argued that on the dates on which the cheques were issued by the Company, the petitioner was not a Director of the Company nor was he actively involved in the day-to-day affairs of the Company. He has drawn my attention towards the case reported in 2000 Cri.L.R. (SC) 778 more particularly towards head note which reads as under:

> "Negotiable Instruments ACt, 1881--Secs.138 & 141--Dishonour of cheque--Offence by Company--Liability of Director--Appellant was not person in-charge and responsible to conduct of business of the company at the relevant time--proceedings against appellant quashed."

He has also drawn my attention towards para 9 of the said judgment which reads as under:

> "It is clear that the allegations made in the complaint do not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was incharge of and was responsible to the company for the conduct of its business."

Relying upon the aforesaid decision of the Apex Court, he has prayed that since the petitioner was not in charge of and was responsible to the company for the conduct of its business as he has resigned from the company as a Director much prior to the dates on which the cheques in question were issued by the Company, the complaint qua the present petitioner may be quashed and the process issued in said complaint may be set aside.

5. It clearly appears from form No.32 filed in by the petitioner that he had resigned as Director of the company as early as back on 17-1-2002 and, as a matter of fact, for the cheques issued by the Company thereafter, the petitioner cannot be held liable as he was not in charge of and was responsible for the day-to-day affairs of the Company on the dates on which the cheques were issued by the Company. Since the aforesaid decision of the Apex Court relied upon by the learned counsel for the petitioner squarely covers the case of the petitioner, complaint qua present petitioner deserves to be quashed and petition requires to be allowed.

6. This petition is allowed. The complaint being Criminal Case No.314 of 2002 and the process issued in said complaint pending in the Court of learned Chief Metropolitan Magistrate, Ahmedabad, is hereby quashed and set aside qua the present petitioner. Rule is made

absolute accordingly.

(R.P.DHOLAKIA,J.)
RADHAN/